

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**AUGUSTINE M. COX**  
Claimant

VS.

**KANSAS NEUROLOGICAL INSTITUTE**  
Respondent

AND

**STATE SELF INSURANCE FUND**  
Insurance Carrier

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Docket No. 220,510

## ORDER

Claimant appealed the preliminary hearing Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer on October 3, 1997.

## ISSUES

Claimant requested Appeals Board review of the following issues:

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of her employment with respondent.
- (2) Whether claimant gave timely notice of accident.
- (3) Whether just cause was established by the claimant for failure to give the 10-day notice of accident.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issues raised by the claimant are jurisdictional and grant the Appeals Board authority to review a preliminary hearing order. See K.S.A. 44-534a, as amended.

(1) Claimant requested medical treatment and temporary total disability compensation for an injury to her back and legs allegedly caused by repetitive lifting, bending, and stooping while working for the respondent. Claimant alleged her injuries occurred during a period from December 13, 1996, through January 5, 1997. At the time of her alleged injury, claimant was employed by the respondent as a mental retardation technician. Claimant was required to perform repetitive lifting, stooping, and bending activities while caring for institutionalized clients.

On Saturday, December 14, 1996, claimant testified that she awoke with pain in her right leg. Upon examination she also found a knot in her right leg. Claimant had worked for the respondent on Friday, December 13, 1996, but testified she had no symptoms at work. Claimant went on her own to see her family doctor, George W. Wright, M.D., on Monday, December 16, 1996. Dr. Wright examined claimant and diagnosed right calf pain, most likely thrombophlebitis and left flank pain, most likely musculoskeletal. The doctor took claimant off work and prescribed anti-inflammatory medication and physical therapy. Dr. Wright saw claimant on December 19, 1996, and recommended work with the restriction of no lifting for a week. Claimant was returned to work on January 2, 1997. She worked through January 5, 1997, but could not continue because of her continuing symptoms.

Dr. Wright again referred claimant to physical therapy on January 14, 1997. Claimant was also referred to Kurt R. Knappenberger, M.D., of the Orthopedic Clinic of Topeka, P.A. Dr. Knappenberger saw claimant on January 29, 1997, and diagnosed a low-back strain. Claimant was placed on medication and continued physical therapy. Dr. Knappenberger returned claimant to work with a 20-pound weight restriction on February 11, 1997. Claimant testified that the respondent returned her to light duty work on February 20, 1997. Finally, claimant was returned to regular work by Dr. Knappenberger on April 22, 1997.

Claimant, however, testified she was unable to perform the regular work and she continued on light work until June 13, 1997, when she notified the respondent that she needed further accommodations. The respondent then notified claimant by letter dated June 19, 1997, that it could no longer accommodate her and respondent terminated claimant.

Claimant testified she realized her back and leg pain was associated with her work activities as early as December 19, 1996. Claimant testified she delivered the off-work slip from Dr. Wright to Diane Waggoner, LPN, of respondent's Personnel Health department on December 19, 1996. At that time, claimant testified she notified Ms. Waggoner that her blood clot and back pain were related to her work activities.

The Administrative Law Judge found claimant had failed to prove that her blood clot condition of her right leg and her low back pain were related to her work. The Administrative Law Judge supported this conclusion by finding that claimant did not report the blood clot or back pain to the respondent until February 24, 1997. Claimant did not describe any specific lifting incident that would have caused the injuries. The medical records indicated that no objective findings of injury were found either by the Doppler vein test or the CT scan.

The Appeals Board agrees with the Administrative Law Judge's conclusion and affirms his finding that claimant failed to prove that her blood clot condition and low back pain were related to her work.

(2) The Administrative Law Judge also found claimant had not given the respondent notice of accident within ten days thereof as required by K.S.A. 44-520. The Appeals Board concludes, having found and affirmed the Administrative Law Judge's finding that claimant failed to prove she suffered an accidental injury, the notice issue is moot and will not be addressed by the Appeals Board.

(3) The Administrative Law Judge did not address the just cause issue and the claimant did not argue the just cause issue in her brief. Therefore, this issue will not be addressed by the Appeals Board.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Compensation of Administrative Law Judge Floyd V. Palmer dated October 3, 1997, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1997.

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
Jeff K. Cooper, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director